



Right to adequate food in constitutions



“Today, striving to ensure that every person enjoys adequate food is seen not only as a moral imperative and an investment with enormous economic returns, but also as the realization of a basic human right”.

Guide to Legislating on the Right to Food, FAO

BACKGROUND

Countries in Africa have made renewed commitments to end hunger, such as in the Malabo Declaration of 2014, the SDGs of 2016 and other international and regional declarations. If these are supported by effective legislation, including constitutional protection, the future economic, social and cultural benefit to the continent is evident.

THE INTERNATIONAL AND REGIONAL FRAMEWORK

The commitment reflects obligations under international human rights law: The right to adequate food for all people everywhere, was formally recognized in the **Universal Declaration of Human**

Universal Declaration of Human Rights, 1948

Article 25(1):

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...”.

Rights of 1948. Article 25 established food as a vital element for people’s health and well-being. Since then, the right to adequate food is reiterated in international declarations, treaties and agreements and is enshrined in **Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)**. It establishes the legal right to food and is legally binding on its 169 States Parties¹. The African Charter on Human and Peoples’ Rights implicitly recognizes the right to adequate food.

The right to adequate food is the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear. The core content of the right to adequate food implies:

¹ All countries in Africa have ratified the ICESCR except Botswana, Mozambique and South Sudan.

- **The availability of food** - sufficient quantity and quality of culturally acceptable foods to satisfy dietary needs, free from adverse substances and
- **The accessibility of food** - available in ways that are sustainable and that do not infringe upon the enjoyment of other human rights.

Food and nutrition security exists when all people at all times have physical, social and economic access to food, which is safe and consumed in sufficient quantity and quality to meet their dietary needs and food preferences, and is supported by an environment of adequate sanitation, health services and care, allowing for a healthy and active life.

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

THE DUTIES OF STATES

States are duty-bearers while people are right-holders. The legal obligations of States come from binding international treaties that have been ratified by them. Once an international instrument is ratified, the State must ensure its **effective enforcement at the national level**.

According to Article 2.1 of the ICESCR, a State Party should take steps to the maximum of its available resources for the progressive realization of the rights contained within it, including particularly by the adoption of legislative measures.

The State has the obligation to **respect, protect** and **fulfill** the right to food and must always do so in a way that is **non-discriminatory** and ensures that all human rights are protected.

States have the obligation to:

Respect – existing access to adequate food must be respected and no measures can be taken which may result in preventing access

Protect – the State must take measures to ensure that third parties (e.g. enterprises or individuals) do not deprive people of their access and rights to adequate food

Fulfill – the state must proactively strengthen people's access to and utilization of resources and the means to secure their livelihood including food security (facilitate) as well as fulfill the obligation to provide food wherever a group or individuals are unable for reasons beyond their control to enjoy the right to adequate food by the means at their disposal (provide). This applies also to people who are victims of natural or other disasters.

UN Special Rapporteur on the Right to Food.
<https://www.ohchr.org/en/issues/food/pages/foodindex.aspx>

In addition to the international human rights framework, regional human rights treaties have been developed to commit and guide States to action. The **African Charter for Human and People's Rights** (Banjul Charter) is a case in point. It has been ratified by 53 African states² and is considered to provide implicit recognition to the right to food in its Articles 4 (the right to life); 16 (the right to health); and 22 (the right to economic and social development), as interpreted by the **African Commission on Human and People's Rights Principles and Guidelines on the implementation of Economic, Social and Cultural rights in the African Charter on Human and People's Rights** and in the case law of the African Commission. The right to food is further expressly recognized in relation to women in *Article 15* of the **Protocol to the Banjul Charter on the Rights of Women in Africa**. The vast majority of African countries have ratified these regional and relevant international human rights treaties.

² South Sudan is the only African state not yet to have signed up to the Banjul Charter.

Soft law, or non-legally binding international and regional instruments, lay down persuasive guidelines, principles and moral responsibilities on States. These take the form of declarations, recommendations, resolutions etc. The **Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security** of 2004 are an example of a soft law instrument adopted for and by States that provides extensive persuasive and clear guidance as to how States can implement the right to adequate food. These Guidelines recommend a variety of measures, including constitutional and legislative actions as well as coordinated institutional frameworks, to address the cross-sectoral dimensions of the right to food.

The principal **non-legally binding** instruments relating to the right to adequate food are:

- Universal Declaration on Human Rights, 1948.
- Universal Declaration on the Eradication of Hunger and Malnutrition, 1974.
- Rome Declaration on World Food Security, 1996.
- Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, 2004.
- Sustainable Development Goals 2015 (SDG2).

THE IMPORTANCE OF CONSTITUTIONAL PROTECTION

Seeking to include express provision of the right to adequate food in a country's constitution is one of the most fundamental and enduring legislative actions that can be taken at the national level to comply with international obligations.

As a country's supreme law, the Constitution sets out the rights and responsibilities of groups and individuals, the obligations of the State and establishes the rules for government itself, with the checks, balances and limitations necessary for legitimate governmental authority. Given its hierarchical placement in the legislative order, incorporating the right to food in a clear and explicit way in a country's Constitution can bestow the highest level of recognition of its guarantee. In the same way, its precise and direct inclusion aids the interpretation of related laws and eventual amendments of national

laws; as well as acting to promote and raise awareness of that right nationally. Generally, the Constitution surpasses changes of government and political trends and so to place within it the right to food favours its long-term protection.

When the right to food is established in the bill of rights of a constitution, it gives rise to administrative and public law rights such as the right to judicial review of any law which is inconsistent with or an obstacle to the enjoyment of the right to food. Laws considered to be in contravention of the right to food can be declared unconstitutional. It would also entail the right to a remedy for those whose rights have been breached.

CONTENT OF CONSTITUTIONAL PROVISIONS ON THE RIGHT TO FOOD

Many national constitutions do refer in one way or another to the right to adequate food. Constitutional recognition may be explicit and direct, for example in Kenya and Niger; or it can be implicit within a broader interpretation of other human rights, for example in the Federal Democratic Republic of Ethiopia (Art 41 and 42); or it can be by way of recognition of the right to food as a goal or directive principle within state policy, for example in Sierra Leone (Art 8.3.a) or the Federal Republic of Nigeria (Art 16(2) d). Constitutional recognition may also result from judicial interpretation of another constitutional provision, or through the 'monist' system³ of entrenchment, whereby ratified human rights treaties are considered to take precedence automatically within the internal legal system making the right to food theoretically operational at the national level due to the explicit constitutional duty to implement and monitor international human rights obligations. Many African countries' constitutions adhere to the monist system. Despite these provisions, it is highly recommendable to incorporate direct and express recognition of the right to adequate food within a country's constitution.

Constitutional provisions alone clearly are not enough to guarantee food and nutrition security nor the eradication of hunger. However, explicit and detailed recognition of the right to food can make an important contribution, particularly if provision is

³ The Monist system considers domestic law and internationally ratified laws as being part of the same legal system and recognizes and incorporates the country's international obligations arising from the ratification of international treaties.

EXAMPLES OF EXPLICIT CONSTITUTIONAL PROVISIONS RECOGNIZING THE RIGHT TO FOOD IN AFRICA

Countries	Provisions
Democratic Republic of Congo	Article 47: The right to health and to food security is guaranteed.
Egypt	Article 79: Each citizen has the right to healthy and sufficient food and clean water. The State shall ensure food resources to all citizens. The State shall also ensure sustainable food sovereignty and maintain agricultural biological diversity and types of local plants in order to safeguard the rights of future generations. Article 80: Anyone under the age of 18 shall be considered a child. Each child shall have the right to a name, identity documents, free compulsory vaccination, health and family or alternative care, basic nutrition, safe shelter, religious education, and emotional and cognitive development.
Republic of Kenya	Article 43(c): Every person has the right ...to be free from hunger, and to have adequate food of acceptable quality. Article 53(1): Every child has the right: (c) to basic nutrition, shelter and health care.
Malawi	Article 13(b): The State shall actively promote the welfare and development of the people of Malawi by) progressively adopting and implementing policies and legislation aimed at achieving the following goals: (b) Nutrition: To achieve adequate nutrition for all in order to promote good health and self-sufficiency. Article 30.2: The State shall take all necessary measures for the realization of the right to development. Such measures shall include, amongst other things, equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure.
Niger	Article 12: Everyone has the right to life, to health, to physical and moral integrity, to a healthy and sufficient food supply, to drinking water, to education...
Republic of South Africa	Article 27(1): Everyone has the right to have access to [...] (b) sufficient food and water; (2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights;
Zimbabwe	Article 77: Every person has the right to – (b) sufficient food; and the State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realization of this right. Article 81(1): Every child, that is to say every boy and girl under the age of eighteen years, has the right- (f) to education, health care services, nutrition and shelter. Article 15: The State must – (a) encourage people to grow and store adequate food; (b) secure the establishment of adequate food reserves; and (c) encourage and promote adequate and proper nutrition through mass education and other appropriate means.” Article 19 (2): The State must adopt reasonable policies and measures, within the limits of the resources available to it, to ensure that children – (b) have shelter and basic nutrition, health care and social services. Article 21 (2): The State and all institutions and agencies of government at every level must endeavour, within the limits of the resources available to them (b) to provide facilities, food and social care for elderly persons who are in need.

also made through implementing legislation, such as framework laws on food security and nutrition and complimentary sectoral legislation, courts with jurisdiction to enforce the right, and allocation of adequate budget. The clear, explicit and detailed constitutional recognition of the right to food will aid governments in laying down appropriate legal framework, in prioritizing action, in providing safeguards against retrogressive measures and in raising knowledge and awareness on food and nutrition security as a human right for all people.

STRATEGIES FOR INCLUDING THE RIGHT TO ADEQUATE FOOD IN THE CONSTITUTION

When considering constitutional protection for the right to food at the national level, the choice of strategy is very much country specific, depending to a large extent on the mix of policy, institutional and legal frameworks within the country. A constitutional amendment can either clarify an existing clause or insert an entirely new clause to expressly protect the right to food.

Putting appropriate legislative frameworks requires political will and parliamentary action, consolidated through cooperation and multisector collaboration and strengthened awareness of legislators. To this, one should add efforts to raise public awareness, as well as that of the executive and judicial branches, to prepare the ground for popular, legitimate and lasting legislative progress.

The Pan African Parliamentary Alliance for Food Security and Nutrition (PAP-FSN) holds the potential to follow the example of Parliamentary Front against Hunger (PFH) in the Latin America and the Caribbean region⁴, and provide dedicated space for legislative processes to guarantee the right to food, and foster participation, connect interested parties, enhance transparency, and promote technical support and awareness raising. Partnerships with specialized agencies, such as FAO and WHO could help parliamentarians and their advisors to participate in trainings, analytical processes, and the exchange of experiences, as well as in public information and media campaigns strengthening skills and impact.

PARLIAMENTARY ACTION CHECKLIST

An elected politician has a legal obligation and moral duty to act in representation of all the people, and especially in protection of those most vulnerable among its constituents. Parliamentarians have a clear role to drive legislative advances, provide oversight and approve budgets. Action on the part of parliamentarians is fundamental to securing the right to adequate food for all. They can take the following action:

- Consider either forming or joining a parliamentary alliance to promote the right to adequate food, which may take the form of a parliamentary alliance against hunger or for food security and nutrition, a parliamentary committee, or another similar parliamentary group.
- Review the current state of the Constitution in terms of recognition of the right to adequate food and whether it provides for the right explicitly or not. Identify gaps and opportunities for amendment and check the constitutional requirements and procedures that amendment must follow.
- Promote the ratification of international and regional treaties, such as the ICESCR and the African Women's Protocol, that protect the right to adequate food, and if the state is already a party to a treaty, consider the recommendations of treaty bodies or mechanisms such as the Universal Periodic Review⁵ or the Special Rapporteur on the right to adequate food as part of their parliamentary oversight mandate.; this can provide important supporting evidence.
- Check and review draft legislation and budgets to ensure inclusion of right to food principles, adequate financing for FSN and accountability of relevant actors.
- Engage with constituents to determine implementation of the right to adequate food locally and to provide relevant evidence to government or constitutional review committee, if there is one, on the effectiveness of current legal provisions.

⁴ <http://parlamentarioscontraelhambre.org/en/>

⁵ UPR: Every four to five years the government must prepare and submit a report on progress in human rights, and then defend this before its peers at the Human Rights Council. Other entities can also submit independent review reports.

- In reviewing reports of relevant government ministries and agencies, investigate the implementation of laws and policies relating to the right to adequate food and ask questions on the utilization of funds, and in the process identify legal and budget-related gaps.
- Consider securing regional parliamentary support for legislative processes relating to the right to adequate food, such as recommendations on constitutional amendments and implementation of relevant model laws.
- Learn more, seek specific trainings and capacity building support and raise awareness based on the knowledge and skills they develop.
- Find allies and build alliances, for example with academia, national human rights institutions, lawyers' groups and the judiciary, other parliamentarians, international cooperation partners, civil society, media, government.
- Ensure public information and processes of consultation, generate consensus, seek public and private support for any draft amendment, as well as in the executive and judicial branches.
- Look to South-South Cooperation – is your country's experience of benefit to other countries or can you seek support from other countries from the region/ beyond? One successful example is the PFH of Latin America and the Caribbean.

REFERENCES/RESOURCES FOR FURTHER INFORMATION.

FAO Right to Food Guidelines

<http://www.fao.org/3/a-y7937e.pdf>

FAO 209 Guide on legislating for the Right to Food

<http://www.fao.org/3/a-i0815e.pdf>

FAO Right to Food Handbook 1 Constitutions

<http://www.fao.org/3/a-i3448e.pdf>

OHCHR Right to Food

<https://www.ohchr.org/en/issues/food/pages/foodindex.aspx>

CESCR General Comment 12, the right to adequate food

FAO 2014 Legal developments in the progressive realization of the right to adequate food

<http://www.fao.org/3/a-i3892e.pdf>

FAO Database the right to food around the globe

<http://www.fao.org/right-to-food-around-the-globe/en/>